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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

CITY OF WALNUT, Plaintiff and Respondent, v. MOUNT SAN ANTONIO COMMUNITY COLLEGE DISTRICT, Defendant and Appellant.	B287619 (Los Angeles County Super. Ct. No. BC576587)

APPEAL from a postjudgment order of the Superior Court of the County of Los Angeles, James C. Chalfant, Judge. Affirmed.

Stradling Yocca Carlson & Rauth, Sean B. Absher and Shana Inspektor, for Defendant and Appellant.

Leibold McClendon & Mann, John G. McClendon and Barbara Z. Leibold, for Plaintiff and Respondent.

I. INTRODUCTION

The City of Walnut (the City) petitioned the trial court for orders affirming and enforcing its stop work order issued against a construction project proposed by the Mount San Antonio Community College District (the District). Following the trial court's ruling granting, in part, the relief the City requested, the City successfully moved the trial court for an award of attorney fees under Code of Civil Procedure section 1021.5 (section 1021.5).

On appeal, the District challenges the trial court's award of the full amount of the attorney fees sought by the City, without any reduction or allocation based on the City's partial success. According to the District, the trial court erroneously awarded fees to the City based on partially successful claims that did not confer a substantial benefit on the public as required under section 1021.5. The District also contends that the trial court abused its discretion by failing to reduce the fees awarded based on an equitable allocation between the claims on which the City succeeded and those on which it did not.

We hold that the District has failed to demonstrate that the trial court erred in awarding attorney fees to the City under section 1021.5. We further hold that the trial court did not abuse its discretion in refusing to allocate the fee award between successful and unsuccessful claims. We therefore affirm the order awarding attorney fees.

II. FACTUAL AND PROCEDURAL BACKGROUND[1]

A. *Solar Project*

The District proposed to construct a solar energy generation facility (the Solar Project) located on a 27.65 acre undeveloped hillside commonly known as the west parcel of the Mount San Antonio Community College[2] campus. The Solar Project was designed as a 2.0 megawatt electrical output system facility with ground-mounted tracking solar panels and a small masonry structure to house equipment located on a 10.6 acre pad on the west parcel.

In February 2013, the District approved the Solar Project as part of the 2012 Master Plan Update and, as lead agency, cleared the project when its Board, on December 11, 2013, certified a 2012 environmental impact report (EIR).

In December 2015, the District issued a draft addendum to the 2012 environmental impact report, which described plans to extend construction truck hauling operations for the project. On January 13, 2016, based on concerns about the impact of the Solar Project's construction truck traffic on public safety, the City attended a meeting of the District's board and opposed the

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[1] This background section is based, in part, on the trial court's March 14, 2017, written ruling on the parties' respective mandamus and declaratory relief claims.

[2] As of March 2017, Mount San Antonio Community College was the largest single-campus community college in California with a student enrollment of 37,364.

proposed addendum. The Board nonetheless approved the proposed addendum (Addendum).

The District commenced development of the Solar Project without obtaining from the City a conditional use permit, a building permit, or a grading permit. Instead, the District developed the project by obtaining approvals from state and federal agencies, such as the California Department of Fish and Wildlife and the Army Corps of Engineers. After obtaining those approvals, the District planned to begin construction of the Solar Project on October 24, 2016. But, on October 20, 2016, the City issued a stop work order.

B. *The Related Litigations*[3]

1. The City's Petition/Complaint

On December 21, 2015, the City filed a petition for writ of mandate/complaint for declaratory relief and thereafter filed the operative first amended petition/complaint on March 24, 2016. In the first cause of action for writ of mandate, the City alleged that: the District violated CEQA by failing to carry out an adequate CEQA analysis in approving the Solar Project; the District violated state planning and zoning law by failing to submit the Solar Project to the City for a finding that it was consistent with the City's general plan; and the District violated the City's municipal code by failing to submit grading, hauling route, or other plans to the City for approval.

In the second cause of action for declaratory relief, the City sought a declaration as to whether: the District's approval of the

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[3] On March 24, 2015, United Walnut Taxpayers (United Walnut) filed a complaint seeking declaratory and injunctive relief and a writ of mandate. Among other things, United Walnut alleged that certain District construction projects, including the Solar Project, did not comply with California Environmental Quality Act (CEQA) requirements because, although one or more programmatic EIRs had been prepared for the projects, no project-specific CEQA documents had been prepared. The United Walnut petition was consolidated for decision with the City's subsequent petition and the District's cross-petition. The claims asserted in United Walnut's petition, the trial court's ruling on their merits, and the court's subsequent ruling awarding United Walnut attorney fees are not at issue in this appeal, which involves only the trial court's ruling on the City's motion for attorney fees.

Addendum was proper; Government Code sections 53091 and 53094 exempted the Solar Project from the City's land use police powers and regulatory authority; and CEQA and CEQA guidelines required or permitted the City to take over from the District the lead agency role for the Solar Project.

2. The District's Cross-Complaint/Petition

On November 18, 2016, the District filed a cross-complaint/cross-petition for writ of mandate against the City. On December 30, 2016, the District filed the operative second amended cross-complaint/cross-petition for writ of mandate, alleging that it had received all necessary regulatory and permitted approvals for the Solar Project and that it was not required to obtain a conditional use permit (CUP) or approvals for grading, hauling, or construction of the Solar Project because it was exempt from local zoning and building controls pursuant to Government Code section 53091, subdivisions (d) and (e). According to the District, the City exceeded its local police powers and authority when it issued its stop work order.

The first cause of action for writ of mandate against the City to prevent it from stopping work on the Solar Project alleged that the project was exempt from the City's grading controls, local zoning ordinances, and building codes. The second cause of action for declaratory and injunctive relief sought a declaration that the Solar Project was exempt from the City's grading ordinances under Government Code section 53091 or, in the alternative, a declaration that if the grading ordinances were applicable to the project under Government Code section 53097, the City's authority was limited to review and approval of

grading plans without conditioning approval on the District's compliance with the City's zoning and building ordinances. The District also sought an injunction against enforcement of the City's stop work order.

C. *The Ruling on the Parties' Mandamus and Declaratory Relief Claims*

Following briefing, evidentiary submissions, and oral argument on the parties' respective mandamus and declaratory relief claims, the trial court ruled as follows: "The City[']s first amended petition] against the District is granted in part. The . . . Solar Project must comply with the City's grading requirements, but the City's haul route requirement[] is not within the scope of the City's [p]etition (it is within the scope of the District's [second amended cross-complaint]). The District need not comply with the City's other zoning requirements. Additionally, the District failed to proceed in the manner required by CEQA in failing to prepare and circulate an initial study for the Solar Project. The District also improperly relied upon the Addendum. The District must set aside Solar Project approvals and Addendum, and prepare and circulate an initial study for the Solar Project before approving it. The City may not act as lead agency for the Solar Project. . . . [¶] The District's [second amended cross-complaint] against the City is granted in part. The District is entitled to declaratory relief that (1) it is exempt under [Government Code] section 53091 and [the District] may proceed with construction of the Solar Project without applying for zoning and building permits from the City, with the exception of grading and haul route approvals[,] (2) the City may not enforce the [s]top [w]ork

[o]rder by requiring land use entitlements and a CUP, but may enforce the requirement of grading and haul route approvals, and (3) the City must review and process the grading plans for approval under its grading ordinances, but without a CUP, building permits, or zoning controls other than grading and haul route approvals. The court offers no current opinion whether the City's grading plan and haul route approvals are ministerial or discretionary in nature. [¶] The City is entitled to a judgment and writ on its [first amended petition] and the District is entitled to declaratory relief against the City. . . ." The trial court entered judgment on May 4, 2017.

D. *The City's Motion for Attorney Fees*

On August 23, 2017, the City filed its motion for attorney fees and supporting documentation under section 1021.5. The City argued that: it was the successful party in the litigation; its action resulted in the enforcement of an important public right; and its action conferred a significant benefit on the public. The City also argued that its requested lodestar[4] hourly rates and

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[4] Under the lodestar method for calculating a reasonable attorney fee, the trial court determines the reasonable number of attorney hours that should have been expended on the matter and multiplies that amount by the hourly rate it deems reasonable in light of the services rendered. "The lodestar method, or more accurately the lodestar-multiplier method, calculates the fee 'by multiplying the number of hours reasonably expended by counsel by a reasonable hourly rate. Once the court has fixed the lodestar, it may increase or decrease that amount by applying a positive or negative "multiplier" to take into account a variety of other factors, including the quality of the

claimed number of attorney hours expended were reasonable and supported its request with detailed time records from the four attorneys who worked on the matter. The City requested a total award of $543,731 in attorney fees.

On November 2, 2017, the District filed its opposition to the City's attorney fees motion, arguing that: the City was not the successful party; the litigation had not conferred a significant benefit on the public; the requested lodestar hourly rate should be limited to the $205 per hour contract rate paid to the City Attorney; and the lodestar amount should be reduced by 50 percent because the City was only partially successful on its claims against the District.

In its reply brief, the City reiterated that: it was the successful party; it had succeeded in enforcing an important public right; it had conferred a significant benefit on the public; its requested hourly rates should not be reduced to contract rates; and its total amount of requested fees should not be reduced because it achieved all of its litigation objectives.

On November 16, 2017, the trial court provided the parties with a detailed tentative ruling on the City's attorney fees motion and heard oral argument. At the outset of the hearing, the trial court stated, "There's no doubt in my mind that the City was the successful party. . . . [T]here's no question the City stopped the project for CEQA compliance and grading and hauling compliance, so they're the successful party." The trial court also observed that the District's partial success did not "significantly undermine[] the City's litigation objective."

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representation, the novelty and complexity of the issues, the results obtained, and the contingent risk presented.'" (*Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480, 489.)

During argument, in response to the District's contention that the fee award should be allocated between successful and unsuccessful claims, the trial court explained, "It is certainly true that I can allocate. It is certainly true that I can, in my discretion, decide not to allocate and . . . I've assessed the issue. I completely agree with you that they did not win on an important feature of their case, which was that their zoning code applies to District projects. But I've decided not to allocate because I think that the CEQA claims drove this case and they prevailed on their CEQA claim. [¶] . . . [¶] [B]ut . . . I don't just make up numbers to parse those claims. I mean, when the claims are all presented in a package and there's . . . no argument by [the District that the City] spent this many hours on the zoning claims and this many hours on the CEQA claims; there's no division by [the District in its] opposition. And so then I decide not just on [the] successful-party issue, but does it make sense to allocate or parse the attorney's fees based on successful and unsuccessful claims. And there's a lot of law that says that the court doesn't need to do that, that a victory is a victory and if you win on some and lose on some, it's still a victory and . . . there's also laws . . . that claims can be parsed for partial success. And I believe that's a discretionary call and my call is not to parse. . . ."

At end of the argument, the trial court acknowledged that it could reduce fees based on the denied claims, but concluded, "I just don't think I want to do that in this case. I'm exercising my discretion not to parse. . . . [¶] . . . [¶] I'm adopting my tentative as the order."

That same day, the trial court filed its written tentative ruling as the final ruling of the court. On the issue of reduction of the lodestar based on limited success, the trial court's order

provided: "The District seeks to reduce the lodestar amount by 50% to account for the City's partial success on the merits. . . . The District argues that the City achieved only limited success on its petition against [the] District, and the District also obtained a partial success against the City. The City sought to compel the District to comply with all of the City's requirements for permits, zoning, and entitlements, and did not prevail on that issue. This was a substantial claim in the City's petition, and [it was] the District who prevailed on this point. . . . [¶] The City sought to compel the District to submit the Solar Project to the City's oversight based on the [p]lanning and [z]oning [l]aw, and the [City of Walnut municipal code]. The City succeeded on obtaining a [judgment] that the Solar Project must comply with the City's grading and hauling ordinances, but not with other land use and zoning controls. The District, on the other hand, sought to compel the City to remove the [s]top [w]ork [o]rder, and sought a declaration that it was exempt from all of the City's land use controls. While [the District] obtained a declaration that it was not required to obtain zoning and building permits, it did not manage to set aside the [s]top [w]ork [o]rder. [¶] As the City points out, it obtained its litigation objective in that it prevented the District from continuing with the Solar Project until the District complied with CEQA and the City's grading and hauling ordinances. . . . The fact that the District is not required to follow the [City of Walnut municipal code] on non-grading issues lessens the impact of the victory, but does not significantly undermine the litigation objective. [¶] The City obtained its primary litigation objective and [the] District was unable to obtain most of the relief sought in [the second amended cross-complaint]. The City's success means that it is entitled to an award of its

attorney's fees without a reduction for partial success. [¶] . . . [¶] The City's motion for attorney's fees is granted in the amount of $543,731."

III. DISCUSSION

A. *Standard of Review*

The trial court's award of attorney fees to the City under section 1021.5 is reviewed for abuse of discretion. "'An award of attorney fees under section 1021.5 requires the applicant to meet three criteria: (1) the action resulted in the enforcement of an important right affecting the public interest; (2) a significant pecuniary or nonpecuniary benefit was conferred on a large class of persons; and (3) the necessity of private enforcement and the attendant financial burden thereof make the award appropriate. Whether the applicant has proved each of these criteria is a matter primarily vested in the trial court. [Citation.]

"'On appeal, our review of the trial court's decision under section 1021.5 is circumscribed. "The 'experienced trial judge is the best judge of the value of professional services rendered in his court, and while his judgment is of course subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly wrong.' [Citations.]" [Citation.] Thus, we may not disturb [such a] ruling . . . "absent a showing that the court abused its discretion . . . , i.e., the record establishes there is no reasonable basis for the [ruling]." [Citation.]' [Citation.]" (*Hogar Dulce Hogar v. Community Development Com. of City of Escondido* (2007) 157 Cal.App.4th 1358, 1364 (*Hogar*).)

B. *Legal Principles Re Fee Allocation*

The District contends that the trial court abused its discretion by awarding the City all of its claimed attorney fees without any allocation or other reduction. According to the District, the City was not entitled to recover the full amount of the lodestar requested because its claims relating to "land use, zoning, and the application of its grading requirements," to the extent they were successful, did not confer a substantial benefit on the public. In addition, the District argues that the lodestar should be further reduced because the trial court abused its discretion by awarding the City fees for services rendered on litigating claims on which it was ultimately unsuccessful.

The legal principles governing the determination of whether a fee award should be reduced based on allocation are well established. "'Where a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee. Normally this will encompass all hours reasonably expended on the litigation, and indeed in some cases of exceptional success an enhanced award may be justified. In these circumstances the fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit.' (*Hensley v. Eckerhart* (1983) 461 U.S. 424, 435 . . . .)

"The principle that attorney fees should not be reduced solely because a litigant did not succeed on all claims or theories is based on the practical reality that 'it is impossible for an attorney to determine before starting work on a potentially meritorious legal theory whether it will or will not be accepted by a court years later following litigation. It must be remembered that an award of attorneys' fees is not a gift. It is just

compensation for expenses actually incurred in vindicating a public right. To reduce the attorneys' fees of a successful party because he did not prevail on all his arguments, makes it the attorney, and not the defendant, who pays the cost of enforcing that public right.' (*Sundance v. Municipal Court* (1987) 192 Cal.App.3d 268, 273 . . . .)

"It is only when a plaintiff has achieved limited success, or has failed with respect to distinct and unrelated claims, that a reduction from the lodestar is appropriate. (*Sokolow v. County of San Mateo* (1989) 213 Cal.App.3d 231, 250 . . . .) However, '[w]here a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his [or her] attorney's fee reduced simply because the [trial] court did not adopt each contention raised.' (*Hensley v. Eckerhart, supra*, 461 U.S. at p. 440.)" (*Hogar, supra*, 157 Cal.App.4th at p. 1369.)

C. *Analysis*

The District's first argument—that the City's partially successful grading ordinance claims did not confer a substantial benefit on the public—suggests that, as a matter of law, the City was not *entitled* to recover any of the fees expended in litigating those claims because it had not established a statutory prerequisite for recovery of them under section 1021.5. The initial problem with this argument is that it does not appear the City explicitly made it in the trial court. Although the District argued generally that the City's successful claims, as a whole, did not confer a substantial benefit on the public, it did not argue that the success on the grading ordinance issues, as opposed to the City's success on the CEQA issue, should be considered in

assessing the amount of fees to which the City should be entitled. The District therefore forfeited this contention on appeal. (See *Keener v. Jeld-Wen, Inc.* (2009) 46 Cal.4th 247, 264-265.)

Moreover, even if the District's argument in the trial court concerning lack of entitlement generally under section 1021.5 preserved this specific issue on appeal, the District has made no attempt, either in the trial court or on appeal, to show the amount of fees that were expended on the partially successful grading ordinance claims that should be subtracted from the lodestar amount awarded. Absent such a showing, the District has failed to carry its burden of demonstrating prejudicial error on appeal.

The District's next argument—concerning an equitable allocation of fees based on weighing the City's success on its CEQA claim and partial success on the grading ordinance claims against its unsuccessful attempt to impose local zoning and building permit requirements on the Solar Project—is equally flawed. Under the controlling abuse of discretion standard of review, the decision of whether to allocate in the manner suggested was vested primarily in the trial court, as a matter of sound discretion, and the District has failed to demonstrate that the court's decision not to allocate was beyond the bounds of reason, all circumstances being considered. At best, the District has shown that reasonable minds may differ on whether it was reasonable to award the City fees for time spent on its largely unsuccessful attempt to impose its local zoning and building ordinances on the Solar Project in contravention of the

exemptions in Government Code section 53091.[5] But, because the trial court was in the best position to evaluate whether the City achieved its primary litigation objectives, in light of all the claims asserted and adjudicated, we cannot substitute our judgment for that of the court on the allocation issue.

In addition, the District's opposition to the fee motion did not segregate the amount of time the City expended pursuing its attempts to impose local controls on the Solar Project—by, for example, itemizing the time entries in the billing records provided attributable to such services—a fact which the trial court noted in deciding not to reduce the lodestar based on an allocation between successful and unsuccessful claims.[6] Instead,

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[5] Government Code section 53091, subdivision (d) provides: "Building ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, wastewater, or electrical energy by a local agency." Subdivision (e) provides: "Zoning ordinances of a county or city shall not apply to the location or construction of facilities for the production, generation, storage, treatment, or transmission of water, or for the production or generation of electrical energy, facilities that are subject to Section 12808.5 of the Public Utilities Code, or electrical substations in an electrical transmission system that receives electricity at less than 100,000 volts. Zoning ordinances of a county or city shall apply to the location or construction of facilities for the storage or transmission of electrical energy by a local agency, if the zoning ordinances make provision for those facilities."

[6] Given the trial court's detailed explanations for its refusal to allocate, both during the hearing on the fee motion and in its written ruling, there is no merit to the District's assertion that

the District argued for a 50 percent reduction in the lodestar, *without any factual basis to support such a substantial adjustment*. Having failed to provide the trial court with a sufficient factual predicate on which to base the requested allocation, the District cannot now complain on appeal that the decision not to allocate, based on the record presented, was a manifest abuse of discretion amounting to a miscarriage of justice.

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the trial court somehow failed to provide a reasoned basis to support its decision not to allocate. Among other things, the trial court expressly acknowledged both the controlling authorities on the allocation issue and its discretion to determine whether to allocate under the circumstances. The trial court also explained that, although the City did not prevail in its attempt to impose local controls on the Solar Project, the City's CEQA claims "drove" the litigation, and the City prevailed on those claims.

IV. DISPOSITION

The order awarding attorney fees is affirmed. City is awarded costs on appeal.

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KIM, J.

We concur:

RUBIN, P. J.

MOOR, J.